

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 09-61025

REGINALD E. SMITH, *pro se*,

Chapter 7

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING DEBTOR'S MOTION TO SET ASIDE ORDER OF DISMISSAL  
AND TO REINSTATE CASE**

This case is before the Court on Debtor's motion to set aside the order of dismissal, filed August 13, 2009 (Docket # 21, the "Motion"), which this Court construes as an untimely motion for reconsideration of, and for relief from, the Court's July 22, 2009 Order dismissing this case (Docket # 17).

The Court has reviewed and considered the motion for reconsideration, and finds that the motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(c).

In addition, the Court notes the following. The allegations in the Motion do not establish excusable neglect under Fed.R.Civ.P. 60(b)(1), FedR.Bankr.P. 9024, or any other valid ground for relief from the order dismissing this case.

The Court also notes that Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1). That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the

opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

Debtor did not receive credit counseling *during the 180-day period preceding the date of the filing of his petition*. The "Certificate of Counseling," which Debtor filed after the case was dismissed, states that Debtor received "an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111" on October 30, 2008. Debtor filed a voluntary petition for relief under Chapter 7 on July 6, 2009. Therefore, Debtor received credit counseling 248 days before his petition was filed.

For these reasons,

IT IS ORDERED that the Motion (Docket # 21), is DENIED.

**Signed on August 20, 2009**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**